

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,

Plaintiff,

-against-

WESTCHESTER FIRE INSURANCE
COMPANY,

Defendant.

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WESTCHESTER FIRE INSURANCE
COMPANY,

Third-Party Plaintiff,

-against-

GLASSWALL, LLC, UGO COLOMBO, and
SARA JAYNE KENNEDY COLOMBO

Third-Party Defendants.

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**DECLARATION OF ROBERT McL BOOTE IN SUPPORT OF
WESTCHESTER FIRE INSURANCE COMPANY'S OPPOSITION TO THE MOTION
TO DISMISS OF THIRD-PARTY DEFENDANTS UGO COLOMBO AND
SARA JAYNE KENNEDY COLOMBO**

Robert McL Boote, Esq., pursuant to the provisions of 28 USC § 1746, declares under the penalty of perjury as follows:

1. I am an attorney for Defendant/Third-Party Plaintiff, Westchester Fire Insurance Company ("Westchester"), in this action. At all relevant times, I have been personally involved in this litigation since inception and am fully familiar with the facts and circumstances of this dispute.

2. I submit this declaration in support of Westchester's Opposition to the Motion to Dismiss of Third-Party Defendants Ugo Colombo and Sara Jayne Kennedy Colombo. This

declaration will also supplement my previous declaration submitted in support of Westchester's Motion for Partial Summary Judgment for Specific Performance of Third Party Defendants' Collateral Security Obligations, or, in the Alternative, for a Preliminary Injunction. Doc. 58.

3. There are currently three lawsuits related to this action pending in Florida State Court:

- a) Case Number 14-2090; Sara Jayne Colombo Kennedy v. Glasswall, LLC, Westchester Fire Insurance Company, Monadnock Construction, Inc., HPS 50th Avenue Associates, LLC., and HPS Borden Avenue Associates, LLC.
- b) Case Number 14-5447; Ugo Colombo v. The Related Companies, Inc., Bruce Beal, Jr., Glasswall, LLC, Westchester Fire Insurance Company, Monadnock Construction, Inc., HPS 50th Avenue Associates, LLC., and HPS Borden Avenue Associates, LLC.
- c) Case Number 15-6405; Sara Jayne Kennedy Colombo v. Monadnock Construction, Inc., Glasswall, LLC, Westchester Fire Insurance Company, HPS 50th Avenue Associates, LLC., HPS Borden Avenue Associates, LLC., Bruce Beal, Jr., and The Related Companies, Inc.

4. In May 2014, all parties agreed to a Joint Stipulation to Stay the Florida litigations in order to allow for the parties to resolve the issues on their own, by either the completion or termination of the underlying contracts. A copy of the Joint Stipulation of all Parties for Stay of Case and a copy of the Agreed Order Entered Pursuant to Joint Stipulation of All Parties for Stay of Case, Case No. 14-2090, are attached hereto as **Exhibits "A" and "B"**, respectively.

5. A similar stipulation and order to those referred to in ¶ 4 hereof was entered in Case No. 14-5447 on June 6, 2014. A copy of the Joint Stipulation of all Parties for Stay of Case and a copy of the Agreed Order Entered Pursuant to Joint Stipulation of All Parties for Stay of Case, Case No. 14-5447, are attached hereto as **Exhibits "C" and "D"**, respectively.

6. In each of the three Florida litigations, Westchester filed a motion to dismiss the Complaint or Amended Complaint based on the mandatory forum selection clause in the Indemnity

Agreement. In Case Nos. 14-5447 and 15-6405, the Court granted Plaintiffs an extension of time to respond to Westchester's motions to dismiss, but no responses have been filed, and no decisions have been made on these motions.


7. On July 11, 2015, the Court issued an Order granting a stay of all three Florida cases pending the conclusion of the New York Arbitration. A copy of the Order Granting Defendants/Cross-Defendants' Motion to Stay Cases Pending Conclusion of the New York Arbitration, Case Nos. 15-6405, 14-2090, and 14-5447 is attached hereto as **Exhibit "E"**.

8. On November 30, 2017 Judge Thornton denied a request to lift the stay "in the interest of judicial economy, because the cases here in Florida and those in New York are either inextricably intertwined or interdependent or duplicative, the result in the alternate forum, whether arbitration, Federal or State, affects the actions here." A copy of the Order Denying Request to Lift Stay, Case Nos. 15-6405, 14-2090, and 14-5447 is attached hereto as **Exhibit "F"**.

9. Most recently, on December 19, 2017, Judge Thornton conducted a hearing at which the parties discussed the issues remaining in the Florida and New York litigations. A copy of the transcript of the December 19, 2017 hearing is attached hereto as **Exhibit "G"**. After hearing the parties, Judge Thornton left the stay order in place and further ordered that the parties set a hearing in 90 days to revisit the stay order. A copy of the Order on Request for Special Set Status Conference, Case Nos. 15-6405, 14-2090, and 14-5447 is attached hereto as **Exhibit "H"**.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: January 9, 2018


Robert McL Boote
Attorney for Westchester Fire Ins. Co.